

BARAFF, KOERNER, OLENDER & HOCHBERG, P. C.

ATTORNEYS AT LAW
5335 WISCONSIN AVENUE, N. W., SUITE 300
WASHINGTON, D. C. 20015-2003

(202) 686-3200

ORIGINAL

B. JAY BARAFF
ROBERT L. OLENDER
JAMES A. KOERNER
PHILIP R. HOCHBERG
MARK J. PALCHICK
JAMES R. MEYERS
SUSAN R. ATHARI*

*ADMITTED IN VA ONLY

OF COUNSEL
ROBERT BENNETT LUBIC

FAX: (202) 686-8282

RECEIVED
APR 26 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 26, 1994

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554


Re: Reply Comments of Atlantic Coast Conference
in PP Docket No. 93-21

Dear Mr. Caton:

On behalf of my client, the Atlantic Coast Conference, I am filing with your office an original and nine copies of the Reply Comments of the Atlantic Coast Conference in the Commission's Further Notice of Inquiry in PP Docket No. 93-21.

Should you have any questions concerning the above, please communicate directly with the undersigned.

Sincerely,



Philip R. Hochberg

PRH/mc/15050.04/pp93-21.a26

No. of Copies rec'd
List ABCDE

0/1

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20534

RECEIVED
ORIGINAL
APR 20 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 26)
of the Cable Television)
Consumer Protection Act)
of 1992)

PP Docket No. 93-21

Inquiry into Sports Programming)
Migration)

REPLY COMMENTS OF THE ATLANTIC COAST CONFERENCE

The Atlantic Coast Conference ("ACC") respectfully submits the following comments in response to the Commission's Further Notice of Inquiry ("Further Notice") in this proceeding, with specific reference to certain opposing positions expressed by the Association of Independent Television Stations ("INTV"). While the ACC comments may parallel submissions received by the Commission from other college conferences and universities, we feel it is important to be on record regarding our view of the major issues in question.

Two themes appear to be of particular continuing interest to the Commission in the college sports context. The first, cited in the Cable Act of 1992, is the general issue of possible migration of sports programming from broadcast television to cable programming networks and pay-per-view services. Further Notice at ¶ 2. This inquiry takes on added significance with the reconfiguration of college football television plans beginning in 1996. Id., at ¶ 30.

Of special emphasis in the Further Notice, the Commission subsequently focuses its analysis of college sports primarily on football (Id., at ¶ 27), requesting additional comments on "local telecasts of college football games and preclusive contracts between video programming vendors and college football conferences." Id., at ¶ 28. Thus, these reply comments will seek to be responsive almost exclusively to these two issues.

I. MIGRATION

As outlined in the Further Notice, the Interim Report "tentatively concluded that college football games previously available to broadcast television had not migrated to cable. . .". Id. This conclusion was made on the basis of the current College Football Association ("CFA") Television Plan. For the ACC, this meant, on average, from four to six games televised on broadcast stations nationally or regionally through the CFA Plan, and an average of 18 to 22 games annually available on broadcast television when combining regional syndication with the national plan.

Beginning in 1996, agreements reached with ABC, ESPN and Jefferson Pilot Sports ("Jefferson Pilot" or "JP") [the ACC rights holder for regional syndication], will increase by more than fifty percent (50%) the number of games available to the consumer on over-the-air television. All told, as many as forty (40) ACC football games annually could be televised live by the three entities listed above.

Put another way, on a typical week in the ACC, only one of the four conference games scheduled will go untelevised.

II. PRECLUSIVE CONTRACTS

Given the Commission's stated emphasis on obtaining supplementary information regarding local telecasts of college football games, especially as it relates to exclusivity provisions contained within existing and future programming agreements, it might be useful to detail the nature of the decisions made by the member institutions of the Atlantic Coast Conference as to its approach on how best to bring college football to the television consumer.

Cognizant that sufficient advertising revenues -- keyed to audience viewership -- are necessary for the televising of any college football property, time period exclusivities have become standard within the industry. College football television does not exist in a vacuum; it must compete with a wide variety of alternative programming choices, both sports and general entertainment alike. These exclusivities are essential in creating needed value for potential advertisers.

Through its present membership in the CFA, the ACC participates in a plan which seeks to bring the best college football games to the consumer on a national and/or regional basis. This national package is important in sustaining widespread interest in college football, effectively promoting both the sport and those universities which sponsor football at this level.

The mechanics of the plan, including (1) time period exclusivity, (2) first selection of member school games, and (3) the 12-day notice provisions, are all critical elements in attempting to accomplish the above. We think this structure maximizes the opportunity for the consumer to see the best game(s) available on a given Saturday. Moreover, provisions allowing for institutions to telecast on a point-to-point basis (back to "local" markets) during the "exclusive" network period are procompetitive.

As stated in our original comments (March 29, 1993), television rights for other ACC football games not covered by the CPA agreement are held by Jefferson Pilot. Again, time period exclusivities exist in an effort to make an ACC Football Game-of-the-Week package economically viable over a syndicated network of individual broadcast stations. While incremental revenue streams do accrue to ACC member schools, of equal if not greater importance from the weekly syndication are benefits going beyond dollars: equitable exposure of each football program and university in the conference across our six-state region; increased awareness and visibility of our universities to prospective students and athletes; and overall public relations and goodwill advantages for several university constituencies (current students, alumni, local community, etc.).

It is particularly relevant to note that no provision of the ACC/JP Agreement restricts local independent stations from acquiring rights to these games from Jefferson-Pilot, and thereby gaining weekly access to ACC football. Thus, at least in our

region, local stations are not "precluded from competing for local college sports rights" as contended by INTV. In fact, ACC football is carried on some independent, i.e., non-network stations.

Beyond this inventory, so long as games are not televised head-to-head with package games, the ACC/JP agreement allows member institutions to "sell to others any of its Member Institutions' home games." In our view, the fact that this is not readily occurring says more about the realities of the marketplace than the "preclusiveness" of the CFA or Jefferson Pilot agreements. Knowing that the remaining games available to be televised from each school will be of lesser value (as they are not the top selections), and accounting for the realization that live television typically impacts attendance negatively, our schools are understandably reluctant to "overexpose" their product and similarly jeopardize a revenue stream [football gate receipts] which is often the equal of overall football television receipts. Delayed telecasts (which are allowed under the ACC/JP agreement), or no telecasts at all, become the preferred option, and should properly remain well within the prerogative of each institution. This is certainly true of the current CFA plan, and will only become magnified with the great increase in broadcast exposures effectively beginning with the 1996 season.

III. CONCLUSION

In short, there currently is shown more college football on over-the-air television than ever before -- and in less than two

years we will be adding significantly to even these record numbers. The contractual exclusivities in question exist for a simple reason: to create a meaningful market for the telecasts of ACC football games. Similarly, with live college football telecasts (often overlapping) available for over 12 consecutive hours every Saturday in the fall, we think the "benefit" to the television consumer is equally straightforward.

April 26, 1994

Respectfully submitted,

ATLANTIC COAST CONFERENCE

By: 

Eugene F. Corrigan
Commissioner
6011 Landmark Center Boulevard
P. O. Drawer ACC
Greensboro, North Carolina 27407
(910) 854-8787